

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JEFF GILLMAN,

Plaintiff,

:

Case No. 3:08-cv-454

-vs-

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

:

DOUGLAS SCHLAGETTER, et al.,

Defendants.

**DECISION AND ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION FOR DISCOVERY**

This case is before the Court on Plaintiff's Motion to Have Requests for Admission Deemed Admitted Pursuant to Fed. R. Civ. P. 36 (Doc. No. 19) which Defendants oppose (Doc. No. 20) and as to which Plaintiff has filed a Supplemental Memorandum in Support (Doc. No. 21).

These filings create a mystery which the Court has been unable to unravel on the basis of the filed papers. Plaintiff's counsel avers that he served **both** Plaintiff's Requests for Admission and Plaintiff's First Set of Combined Discovery Requested to Defendant Shelby County under cover of an email addressed to Defendants' Trial Attorney, Cheri B. Hass, at the email address chass@dhflaw.com. Ms. Hass admits receiving the second of these items but not the first and claims that her co-counsel, Mr. Bernhart, also did not receive the requests for admission; none of these factual assertions is given under oath. Ms. Hass has not explained to the Court how it could possibly be that she received only one of the two attachments to the same email. As Plaintiff's counsel points out, the email address in the signature block on Defendants' Memorandum in Opposition shows an email address of chass@downesfishel.com. However, the email address on file in this Court for Ms.

Hass, the one to which the Notice of Electronic Filing on her Memorandum in Opposition was sent, is chass@dhflaw.com.

On the other hand, Mr. Brannon's Certificate of Service on the Requests for Admissions avers that they were sent by electronic mail to Marc A. Fishel and Todd Ellsworth by electronic and/or regular mail without giving any email address which was used. In other words, there is an irreconcilable conflict between Mr. Brannon's Affidavit of October 20, 2009, and his Certificate of Service which, by the way, is undated and unsigned.

Plaintiff's counsel also asserts that Defendants have not responded as of October 23, 2009, to the combined requests for production and interrogatories which Defendants' counsel admit were received on September 14, 2009. Defendants' Memorandum in Opposition makes no mention of this matter.

Rather than have this litigation sidetracked with squabbles over the service, it is hereby ORDERED:

1. Defendants shall respond to the requests for admission, production of documents, and interrogatories, in the form required by law, not later than November 2, 2009.
2. Plaintiff's Motion to deem the admissions admitted is denied without prejudice to its renewal if proper responses are not received by November 2, 2009.
3. Unless and until properly changed under the Local Rules, the Defendants' trial attorney is designated as Cheri B. Hass and all electronic service on her shall be made to chass@dbflaw.com.
4. Fed. R. Civ. P. 5 to the contrary notwithstanding, all future discovery papers in this case shall be filed with the Court.

October 24, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge